

QUESTION ON NOTICE

Question: 18QW
Member: Thistlethwaite
Topic: ASIC processes to launch initial coin offering
Written

Question:

How does ASIC respond to reports that Australian projects are hesitating to engage with the ECF, for fear of the ECF being classified as some form of financial service under the Corporations Act?

Answer:

- Whether an entity is issuing a financial product or offering a financial service depends on the structure of the product or service and how the Corporations Act applies to the product or service. It does not depend on whether ASIC is consulted and ASIC does not provide formal approvals on commercial structures or legal advice.
- Instead, it is the responsibility of the companies seeking to undertake an ICO to obtain their own professional advice about the legal status of their transaction.
- Some entities have come to ASIC with questions about their transaction or about specific aspects of their transaction. In these cases, ASIC endeavours to respond, including by providing guidance where appropriate, in a timely manner.
- In guidance issued to industry, ASIC has emphasised that ASIC's risk-based focus would be on potentially misleading or deceptive conduct, as such conduct can result in investors being deceived and losing their savings. ASIC considers that this approach focuses on our investor protection mandate while allowing industry flexibility to continue to develop innovative product offerings and ICO structures that would best meet investor interests and the needs of the industry.